willingly conceded that there was no question of the Assistant Commissioner having the slightest financial interest in the adjudication. In the former of the two cases just mentioned, the three learned Judges suggested the test to be applied in cases of this nature in very similar terms. The Master of the Rolls expressed the view that wherever there was a real likelihood that the Judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong for him to act. *Chhin Sin Choy v. Chin Kee & Ors.*[2] is authority, if such should be required, for the proposition that this same test is applicable in this country. I think, however, that both these cases can be distinguished from the present case in that there was, or appeared to be, direct personal interest and therefore the possibility of bias in both cases. In *Chhin Sin Choy v. Chin Kee & Ors.*[2], the Assistant Commissioner had appeared before a Magistrate on behalf of the labourers, under section 85 of the Labour Code, and the employer was the defendant in that action. Clearly, therefore, the Assistant Commissioner had identified himself with one of the parties to the dispute as against the other party. In the *Sunderland Justices*[1] *case* certain of the Justices had actively negotiated an agreement with the brewery company concerned, the same Justices then took part in approving the application of the brewery company for the licence, and then again they took part when the issue of the licence was confirmed. There the Justices had clearly identified themselves with the particular brewery company and would reasonably be expected to be biased against any applicant other than that company for the Licence. Also one cannot overlook a point to which the learned Master of the Rolls apparently made indirect reference. Part of the agreement was that the brewery company should pay the Borough Council £10,000 if it was granted the licence, and there is always the possibility that at any future municipal election the rate-payers might be disposed to view in a favourable light the candidature of a person who had assisted to save the rate-payer the sum of £10,000. In the present case the Assistant Commissioner assisted in negotiating a settlement of a dispute between employer and employees: he went from one side to the other making suggestions and frequently used his good offices to secure a satisfactory settlement. He did not identify himself solely, or even chiefly, with either side, and I can see no reason why such activities should make him likely to be biased either way. It is perhaps a matter for comment that no actual bias was alleged, nor was it stated in favour of of which party in the present case the Assistant Commissioner was likely to be biased. In my opinion, therefore, the Assistant Commissioner was not debarred from conducting the adjudication because of the likelihood of bias or for any other reason.

[The rest of the judgment dealt with matters not relevant to this report and are therefore omitted. — **Ed.**]

Appeal dismissed.

Solicitors: *Benjamin & Sen; Braddell & Ramani.*

LIM KIM HOCK & ANOR. v. KANG CHAI THOAN

[O. C. J. (Taylor J.) September 21, 1948]

[Singapore — Civil Suit No. 376 of 1947]

Landlord and Tenant — Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, s. 2 — Whether action concerning a licence is triable.

In this case the plaintiff claimed possession of *inter alia* the dining room and sitting room in a house, which the defendant had been allowed to use when part of the house was let to him. The premises were let to the defendant during the Japanese occupation.

Held: the transaction in which the licence was granted in this case involved an interest in immovable property and therefore the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 applied to prohibit litigation concerning the licence.

Case referred to:—

(1) *Yeo Peck Chie v. Gill* (1946) M.L.J. 131.

CIVIL SUIT.

N. N. Leicester for the plaintiffs.

H. A. R. Paulusz for the defendant.

Taylor J.: — The plaintiffs have lately purchased a house No. 24 Blair Road. The defendant, who is an Assistant Inspector of Schools, is in occupation of part of the house. The plaintiffs' claim, after amendment during the hearing, is to recover possession of two rooms on the ground floor, the plaintiffs conceding that the defendant is entitled under the temporary legislation to remain in occupation of the front room

on the first floor and also to have the use of the kitchen etc., on the ground floor. The defendant counter-claims a declaration that he is a statutory tenant of the whole of the house excepting the first floor back room.

The history of the matter is shortly as follows: During the Japanese occupation the then owner let the whole house to one Soh Sim Eng for $30 a month. Shortly afterwards Soh sub-let part of the house to the defendant for $35 a month, Soh undertaking thereout to pay the municipal charges, including water and light, for the whole house. Both the terms and the scope of this sub-letting are in dispute. The house is of the old fashioned type similar in construction to a shop-house. The only access from the street is by the front door, of which both Soh and the defendant had a key, and through the front sitting room. The only stair-case leads from the dining-room, which is the second room from the front on the ground floor. There is a gate leading from the back yard to the back lane but this was not used by anyone.

Soh and his family, which consists only of his wife and one small child, lived in the first floor back room. The defendant's family consisted of his wife and 10 children.

According to Soh, on whose evidence the case for the plaintiffs mainly rests, Soh let the first floor front room only and arranged that the defendant's family should share with Soh's family the kitchen on the ground floor; after a few weeks Soh took into use a kitchen, which already existed, at the back of his room upstairs, leaving the kitchen downstairs to the exclusive use of the defendant's family. Both families used the one water closet which is behind the downstairs kitchen.

It is clear therefore that both families at all times had in common the use of the ground floor at least for the purpose of access to their respective rooms upstairs. It is also common ground that when the defendant arrived there was already an air-raid shelter which occupied a portion of the dining-room, that is the middle downstairs room; that both families used this shelter as occasion required and that before the defendant arrived and for some time afterwards some furniture, which was in Soh's care remained in the front room downstairs. There is conflict of evidence as to the details of this furniture but I do not think that this is material.

The defendant and his wife say that from the first they rented the whole of the house excepting only the back room upstairs. They say that when they entered into occupation the kitchen downstairs was completely bare and not in use and that they equipped and used it exclusively from that day excepting that on a few occasions Soh's family jointly used it.

It is quite clear that the defendant did not have exclusive possession of the ground floor and that he could not possibly have had it consistently with the occupation by Soh of the upstair's room. The evidence indicates that Soh made very little actual use of the ground floor excepting for access, whereas the defendant's family made considerable use of it. The defendant's contention really involves the proposition that Soh was a bare licensee of the ground floor for the purposes of access and use of the air-raid shelter. I do not think this can be correct since Soh remained responsible for the municipal services and it is not reasonable to suppose that he would give up his right of control of the ground floor and thus lose the power to prevent waste of water or undue extravagance in the use of electric current. It may be that he seldom if ever required to exercise this right and that in practice he made very little use of the ground floor except for necessary access but this is not material; if he retained the right the defendant could not in point of law be a tenant of those portions of the house.

From the evidence as a whole I draw the conclusion that both families had the right to use the ground floor in common. On this finding the counter-claim cannot succeed but this does not dispose of the action.

The plaintiffs' claim, as framed in the writ, was to recover possession of the whole of the house except the first floor, front room. At an early stage it became clear that in the very nature of the house there must have been at least a license to the defendant to use the kitchen, for otherwise he could not have lived in the house. Plaintiffs' counsel conceded this and the claim was amended accordingly but it was submitted that the defendant was only a licensee, for no consideration, of the sitting room and dining-room on the ground floor. These two rooms are the portion of which the plaintiffs chiefly wish to recover possession and are the essential subject matter of the suit.

The defendant pleaded the Courts (Restriction of Civil Jurisdiction) Ordinance 1946, section 2(c) of which provides that a suit concerning a transaction which took place during the enemy occupation shall not be triable while the Ordinance remains in operation if the transaction affected an interest in immoveable property. A tenancy is an interest in land whereas a mere license is not.

The defendant relied on the Malayan Union case, *Yeo Peck Chie v. Gill*[1], but that case was different in two respects. There was a separate preliminary application to strike out the plaint and no question of a license arose. I therefore allowed this case to proceed, reserving my decision on the application of the statute until the facts were fully elicited.

The application of this temporary legislation to the case in hand is not free from difficulty. A suit concerning a tenancy is clearly prohibited but a suit concerning a license is triable. This action involves both and the question now to be decided is therefore not covered by the judgment by the Chief Justice, Malayan Union, in the case cited. The two Ordinances though somewhat differently arranged, are not to my mind different in effect in any point material to this case. It is therefore necessary to decide this point of law in conformity with that judgment. But, inasmuch as the facts are different, I am most anxious to avoid, if possible, the use of any expression which might be thought either to extend, or to restrict, the scope of that judgment.

It would I think be going too far to say that a suit in which the bone of real contention is a license, is prohibited merely because certain facts relating to a tenancy between the parties are relevant as a matter of evidence. I think the key to the application of the Ordinance to this particular case is the use by the legislature of the word "transaction". If the granting of the tenancy and the granting of the license were parts of one and the same transaction, then the suit is barred. If they were separate transactions, then I think the suit is triable.

If the plaintiffs were to succeed it was necessary for them to show that the sitting and dining rooms on the ground floor, which were admittedly used by the defendant, were used by him as a bare licensee by virtue of a license which was separate from, and independent of, the license to use the kitchen which is a necessary incident of his admitted tenancy of the upstairs' room. A bare license is revocable. A license annexed to a tenancy is not revocable in the same way.

On what seems to me the essential issue the evidence is both meagre and conflicting. On the whole I prefer the evidence of Soh to that of the defendant and his wife. An attempt was made to discredit Soh by alleging that he had received $1,500 as "tea money" to induce him to quit the premises and that this was a motive or inducement to colour his evidence favourably to the plaintiffs. There is however not a tittle of evidence that any such payment was made. It is true that the defendant's wife stated that $1,000 was offered to her but this is not evidence that any sum was offered to, still less accepted by, Soh. It is true that he moved out before his legal notice had expired but this is sufficiently explained by the evidence that his mother offered him temporary accommodation; once he had made up his mind to move it was not unnatural to move at an early opportunity. Moreover, I could not find any points on which Soh's evidence seemed to be weighted in favour of the plaintiffs.

The arrangement was made orally between Soh and the defendant some four years ago. The defendant's wife was present at some but not necessarily at all stages. The case depends on the recollection of these three witnesses. It is possible that, as Soh says, only the upstairs front room was actually let, and the ground floor rooms merely licensed, but he does not say that the license to use the sitting and dining rooms was a distinct and separate license.

It seems to me in the highest degree unlikely that the parties did not make a definite arrangement at the time of the letting, for the use of the kitchen. Having regard to the circumstances at that time it also seems improbable that they did not then make an arrangement about the use of the shelter in the dining room. But I can see nothing in the circumstances from which to draw a similar inference as to when the use of the sitting room was granted (except for access).

It may be that the defendant did not stipulate at the time of the letting, for permission to put some of his furniture there but permission was granted at latest on the day of his arrival.

The evidence therefore fails to shew that the license to use the two rooms in dispute was a distinct and separate license from the one to use the kitchen and independent of the tenancy of the first floor front room.

It follows that the question really in dispute between the parties cannot be litigated without directly litigating the transaction in which the tenancy was created, and as this is (temporarily) prohibited the plaintiffs' claim is barred. Both claim and counterclaim must therefore be dismissed, with costs to be offset, but without prejudice to the rights of the parties when the temporary legislation has expired.

Claim dismissed.